



## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Antitrust Improvements Act Rules (HSR Rules) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (Notification and Report Form). That clearance expires on January 31, 2023.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](https://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review - Open for Public Comments” or by using the search function. The [reginfo.gov](https://www.reginfo.gov) web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB’s Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Room CC–5301, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by telephone to (202) 326–2740.

## **SUPPLEMENTARY INFORMATION:**

*Title:* HSR Rules and Notification and Report Form, 16 CFR parts 801-803.

*OMB Control Number:* 3084-0005.

*Type of Review:* Extension of a currently approved collection.

*Likely Respondents:* Merging Parties.

*Estimated Annual Hours Burden:* 262,579 hours [derived from 7,096 non-index filings x 37 hours/each) + (12 index filings x two hours/each) + (one withdrawn transaction later restarted x three hours)].

*Estimated Annual Cost Burden:* \$120,786,340, which is derived from \$460/hour x 262,579 hours.

*Abstract:* Section 7A of the Clayton Act (“Act”), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require “that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate” to enable the agencies “to determine whether such acquisitions may, if consummated, violate the antitrust laws.” 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, among other things, “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.” *Id.*

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form.

On August 26, 2022, the Commission sought comment on the reporting

requirements associated with the HSR Rules and corresponding Notification and Report Form. 87 FR 52569. No relevant comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements.

### **Burden Statement**

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and FTC staff's informal consultations with leading HSR counsel for outside parties.

#### *Estimated Total Annual Hours*

In fiscal year 2022, the FTC received 6,518 non-index filings. Based on an average annual increase in filings of 4.3% in the pre-COVID fiscal years 2017-2019,<sup>1</sup> FTC staff projects an average of 7,096 non-index filings per year for fiscal years 2023-2025, the time period for which PRA clearance will be requested from OMB.<sup>2</sup> For index filings, FTC staff projects an average of 12 index filings for fiscal years 2023-2025, based on a rough average of 12 such filings per year over fiscal years 2017-2019. Retaining prior assumptions, FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of two hours per filing.<sup>3</sup>

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<sup>1</sup> Due to the exceptional volatility in the number of filings in fiscal years 2020 and 2021, data for these years was not included in the estimation of the annual growth rate of filings.

<sup>2</sup> The number of non-index filings and the projected annual average of non-index filings are updated from the estimates provided in the Commission's August 2022 Notice. See 87 FR 52569, 52570 (2022) (estimating that the FTC would receive 6,580 non-index filings in fiscal year 2022 and projecting an average of 7,160 non-index filings per year for fiscal years 2023-2025).

<sup>3</sup> Index filings pertain to certain transactions described in Sections 7A(c)(6) and (c)(8) of the Clayton Act that are subject to the approval of other agencies and are exempt from the requirements of the premerger notification program. Index filings are incorporated into the FTC's currently cleared burden estimates, because the parties to these exempt transactions must file copies of the information submitted to the other agencies with the Commission and the Assistant Attorney General. However, the task of filing a copy of information provided to another agency requires significantly less time than the preparation of a filing for a non-exempt transaction.

On rare occasions, a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' Securities and Exchange Commission filing indicating that the transaction has been terminated) could be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, i.e., a historical frequency of 0.067 transactions per year. FTC staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a historical frequency of 0.067, this amounts to an annual average of three hours, rounded up, for a withdrawn transaction later restarted.

Thus, the total estimated hours burden is 262,579 hours [(7,096 non-index filings x 37 hours/each) + (12 index filings x two hours/each) + (one withdrawn transaction later restarted x three hours)].

#### *Estimated Total Annual Labor Cost*

Using the burden hours (262,579) estimated above and applying an estimated average of \$460/hour for executive and/or attorney compensation, FTC staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately \$120,786,340.

#### *Estimated Total Annual Non-Labor Cost*

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but such training would be subsumed within the ordinary training that employees receive.

#### *Request for Comments*

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are

solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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